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ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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**REPUBLICAN STAFF BRIEFING MEMORANDUM**

**FULL COMMITTEE HEARING ON "ALLEGATIONS OF MISCONDUCT AT THE GENERAL SERVICES ADMINISTRATION**

On Wednesday, March 28, 2007 at 10:00 a.m., the Committee will hold a hearing entitled "Allegations of Misconduct at the General Services Administration." This hearing is part of an investigation Chairman Waxman initiated in response to a January 19, 2007 front page story in the *Washington Post*.[1] The newspaper published allegations concerning an internal investigation by the General Services Administration (GSA) Inspector General into a contemplated arrangement between the Administrator of General Services, Lurita Doan and a well-recognized firm specializing in diversity and small business issues. In addition Doan is said to have intervened in the negotiation process for the exercise of an option under a Federal Supply Schedule contract held by Sun Microsystems, intervened in an on-going suspension and debarment process, as well as engaging in partisan campaign activities on federal property. Our staff has carefully analyzed the facts and circumstances surrounding these charges and has reached the following conclusions.

1. **Re Diversity Best Practices Contract:** The Majority has failed to establish that the Administrator engaged in any kind of elaborate scheme to enrich an acquaintance in her efforts to acquire a study regarding GSA's use of small businesses, particularly those owned by minorities and woman. The evidence supports the conclusion that the Administrator's efforts to engage a well-known diversity consulting firm, Diversity Best Practices, were the results of the Administrator's legitimate embarrassment and dismay that GSA had received an "F" from the Small Business Administration for its disadvantaged small business utilization. She was determined to improve GSA's image and score. The

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[1] Scott Higham and Robert O'Harrow, Jr., "GSA Chief Scrutinized For Deal With Friend," WASH. POST, Jan. 19, 2007, at A1 [hereinafter Higham and O'Harrow, Jan. 19, 2007].

Administrator erroneously believed she had the authority to acquire these services on an expedited sole-source basis. When she discovered she did not have that authority, the arrangement was called off. No binding contract was awarded. No work was ever performed. No money changed hands.

2. **Re Sun Microsystems Contract:** There is no evidence the Administrator acted improperly with respect to the Sun Microsystems contract option negotiations. At no time during the negotiation process did the Administrator speak to any of the contracting officers, nor did anyone in upper management during the Administrator's tenure pressure any of the contracting officers to exercise the Sun option.

3. **Re Suspension and Debarment Process Interference:** There is no evidence that the Administrator intervened in the suspension and debarment process. The GSA debarment official had initiated preliminary proceedings against the major accounting firms (KPMG, PriceWaterhouseCooper, BearingPoint, Ernst & Young, and Booz Allen Hamilton). The Administrator merely contacted her Chief of Staff and asked that the matter be suspended until she could be briefed. Such an inquiry was ordinary and appropriate. In a written statement prepared by the debarment official and produced to the Committee, he stated, "At no time did I receive any direct or indirect instruction or comment from the Office of the Administrator." Further, he stated, "I processed and concluded the matter as directed by the factual record in accordance with the prescribed process."

4. **Re Hatch Act Allegation:** On January 26, 2007 at the conclusion of a staff luncheon attended by GSA political appointees, the Administrator made an offhand comment about "helping our candidates" in an alleged violation of the Hatch Act. There is no evidence to support the additional allegations that follow-up discussion centered on efforts to exclude Speaker Pelosi from the ceremonial opening of a federal building in her congressional district. No evidence was found that any GSA officials improperly considered the prospect of inviting Senator Martinez to the opening of a federal courthouse in Miami, Florida.

## II. Background

In the January 19 *Washington Post* story, the newspaper presented allegations that Administrator Lurita A. Doan sidestepped federal laws and regulations to give a so-called "no-bid" contract to a longtime friend.[2] *On the same day*, Chairman Waxman wrote to Doan asking for more information on matters contained in the newspaper article. In addition to initiating an examination into the diversity consulting firm arrangement, Chairman Waxman asked for information and documents concerning the Administrator's interactions with the Office of Inspector General, and the Administrator's involvement in the debarment process. On March 6, 2007, Chairman Waxman again wrote to the

[2] Higham and O'Harrow, Jan. 19, 2007.

Administrator. In this letter, the Chairman outlined some of the evidence the Committee had received, and raised new concerns. The Chairman advised Doan the Committee is looking into alleged Hatch Act violations, as well as allegations that the Administrator improperly interfered with the contract option process with a technology provider, Sun Microsystems.

## III. Allegations

### A. Public Disagreements with Inspector General

The GSA Administrator and Inspector General Brian D. Miller have a well-chronicled contentious relationship. They have tangled over the performance of contract auditing and budgetary matters, and have had various disagreements exposed in public exchanges. The Inspector General (IG) has claimed, for example, that Doan has characterized IG officials as "terrorists." *The Washington Post* has reported, "Doan said [the Inspector General's] effort to examine contracts had 'gone too far and is eroding the health of the organization.'"

### B. Allegation Relating to GSA's Contemplated Engagement with Diversity Consulting Firm

The claim that the Administrator awarded a "no-bid" $20,000 contract to a company operated by a personal friend has been greatly overblown. According to newspaper accounts, the Administrator gave her friend $20,000 to compile a 24-page report promoting GSA's use of minority- and woman-owned businesses. This did not happen.

Early in the Administrator's tenure, she was made aware of GSA's poor performance in contracting with minority and women-owned small businesses. As an African-American woman, and former small business owner, the Administrator was particularly disappointed in GSA's performance in this critical area. To this end, she contemplated an arrangement with a prominent diversity consulting firm headed by a professional acquaintance to study GSA's performance in the area of contracting with minority and women-owned small businesses. As the Administrator soon realized, she did not have authority to enter into such an arrangement on a non-competitive basis. Accordingly, the arrangement was called off. No contract was awarded. No work was ever performed. No money ever changed hands. The Administrator summed up her misjudgment in a front page story in *The Washington Post.* "I made a mistake. They canceled it, life went on, no money exchanged hands, no contract exchanged hands." The Administrator's statements are correct.

It is simply not reasonable to conclude from these events that the Administrator's effort to acquire a study of GSA's use of small businesses was really an elaborate scheme to enrich an acquaintance. First, the Public Affairs Group, Inc. and Diversity Best Practices is a respected and successful company that conducts studies and produces reports on practices to encourage the use of minority and women-owned small

businesses. Doan's concept for a study of GSA's practices for encouraging the use of small and minority-owned businesses was a logical match for Diversity Best Practices, whose products and advice in this area enjoyed wide-spread success in the commercial marketplace. Second, the proposed "service order" was for $20,000. This is not a significant sum for a firm, like Public Affairs Group, whose annual revenues are approximately $3 million. The value of the "service order" would have been roughly 0.7% of that firm's total revenue. This hardly seems to have been a *gold mine.*

Moreover, GSA manages tens of billions worth of contracts a year. A $20,000 "service order" is miniscule in view of GSA's overall portfolio. It is odd that a Committee with jurisdiction over government-wide operations would choose to focus on such a minor incident, even though Doan has repeatedly admitted that it was wrong procedurally and a mistake on her part.

Our review of thousands of documents related to this matter lead to the conclusion that Doan's motivations were clear—she was embarrassed and dismayed that GSA had received an "F" from the Small Business Administration for its small business utilization and she was determined to improve GSA's image and score. Fraser in her interview repeatedly spoke about the need for major federal agencies such as GSA to analyze their small businesses practices. Both Doan and Fraser are passionate about this issue. It is also worth noting that despite the termination of the "service order," Doan continued to seek a report and analysis of this matter that was so important to her.

### C. Allegation Relating to the Sun Microsystems Contract

The contract option negotiations with Sun Microsystems were examined by Committee staff. In lieu of subpoenas, "voluntary" transcribed interviews were conducted with four GSA officials, three of whom were Contracting Officers for GSA in talks with Sun. Having the benefit of a careful examination, the facts of the Sun Microsystems contract negotiation do not raise any indicia of wrongdoing on the part of the Administrator. Rather, the facts tell a different story.

On August 23, 1999, GSA awarded Sun Microsystems a Federal Supply Schedule contract for items of equipment and support services for a 5-year base period with three option periods of 5 years each. The initial performance period ran through late August 2004. In August 2004, Sun submitted a request to exercise the first option period of the contract. At that time, the Office of the Inspector General initiated a pre-award audit for the exercise of the option. The audit was not completed until late January 2006. Since neither the supporting audit work nor the negotiations were completed by the expiration date of the initial performance, the contract underwent a series of extensions until finalized on September 9, 2006.

After prolonged negotiations spanning over two years, the contract option was awarded. The Committee has interviewed all three of the most current contracting officers. While it is alleged that this contract option was exercised precipitously under

unfavorable terms due to the improper influence of upper management, there is no evidence in support of these allegations.

To the contrary, interviews with the contracting officers revealed the Administrator had little if anything to do with the Sun negotiations. Numerous contracting officers state they never had contact of any kind with the Administrator while working on this project.

### D. Allegation Relating to Suspension and Debarment

The Administrator is alleged to have acted improperly by intervening in suspension and debarment proceedings. Testimony by the Suspension and Debarment Official at GSA tells a vastly different story.

George Barclay, as Acting Suspension and Debarment Official for the General Services Administration (GSA), initiated suspension proceedings against the former "big five" accounting firms in August and September of 2006. Among Barclay's duties within GSA, he is delegated the authority from the Administrator to determine and carry out suspension and debarment actions. In his role, he also advises the Chief Acquisition Officer (CAO) and Administrator during suspension or debarment proceedings.

The Committee has interviewed Barclay on this matter, and his statements corroborate the information provided to the Committee in his written statement and in the thousands of documents GSA has produced for the Committee. The Administrator's concern about the ramifications these potential suspensions could have throughout the government was reasonable and appropriate for any agency head. In fact, she did not have any effect upon Barclay's decision to issue the show cause letters or upon his subsequent conclusion that the firms had addressed the problems to the extent that he considered them to be currently responsible. Barclay states in a statement produced to the Committee, "At no time did I receive any direct or indirect instruction or comment from the Office of the Administrator." Barclay goes on to note, "I did not consider such expression (Doan's interest in the matter) as interference and I processed and concluded the matter as directed by the factual record in accordance with the prescribed process."

This issue appears to have been pursued by the Majority solely due to *The Washington Post* article from January 19, 2006.

### E. Alleged Hatch Act Violation

According to Chairman Waxman's March 6 letter to the Administrator, officials from the GSA Office of Inspector General reported a potential Hatch Act violation by the Administrator to the U.S. Office of Special Counsel (OSC). It has never been clear why the referral was not sufficient. In any event, the Committee wanted to investigate this matter, too.

The facts of the brown bag lunches are largely not in dispute. Starting in September 2006, the White House liaison for GSA, John "J.B." Horton, convened a monthly brown bag lunch meeting for agency political appointees. Horton arranges for speakers to make presentations monthly. Since September 2006, there have been six brown bag luncheons. At four of the six, members of the White House staff presented to the GSA group on the workings of their respective offices.

Chairman Waxman alleges that at the conclusion of the January 26 presentation by White House aide Scott Jennings, Doan violated the Hatch Act by asking "GSA officials participating in the teleconference how the agency could help 'our candidates' in the next election." This alleged violation of the Hatch Act was referred to the Office of Special Counsel for investigation by GSA Inspector General Brian D. Miller. Seven GSA officials were questioned about this allegation. Six of the seven officials have some recollection of the Administrator mentioning the phrase "our candidates."

The suggestion that Doan desired to prevent Speaker Pelosi from attending the ceremonial opening of the San Francisco federal building does not square with the documentary record. On December 15, 2006, Doan wrote to the President inviting his attendance at the opening of the San Francisco federal building. In this correspondence, Doan remarks, "as one of the most important federal buildings constructed in years, the grand opening ceremony and dedication is expected to draw officials from city, state, and federal levels of government, including Speaker-elect Nancy Pelosi." On January 8, 2007 as the invitation list for the San Francisco federal building ceremonial opening were being drawn up, GSA officials recommend that the Regional Administrator personally invite Speaker Pelosi. Communications and correspondence between GSA officials and the Speaker's office continued. On March 2 GSA officials inquired as to the Speaker's availability for June 7 or 8. The Speaker's office countered with a July 9 suggestion.

Chairman Waxman's March 6 letter alleged that the Administrator acted improperly by noting at the January 26 luncheon that Senator Mel Martinez should be invited to attend the ceremonial opening of the Florida courthouse. Chairman Waxman wrote to the Administrator, "You noted former President Clinton had expressed interest in attending, and you stated an effort should be made to get Senator Mel Martinez, the General Chairman of the Republican National Committee to attend." What Chairman Waxman fails to mention in this letter is that Mel Martinez is currently the junior Senator from the state of Florida. To this end, it would be reasonable and appropriate for the GSA Administrator to suggest an invitation to Senator Martinez. The senior Senator from Florida, Bill Nelson was also invited to the opening of the courthouse. There is no basis to the allegation that the Administrator acted improperly with respect to the discussion of Senator Martinez's participation at the ceremonial opening of the Miami federal courthouse.

Several witnesses have provided testimony that the Question and Answer session following the luncheon was very short. The Administrator made some comments, there were some discussions about the openings in San Francisco and Miami, and the meeting adjourned. The record is clear that when the discussion referenced public officials by

name, such as Speaker Pelosi and Senator Martinez, Scott Jennings, the luncheon's presenter called the meeting to a close.

## IV. Witnesses

The following witnesses have been invited to testify:

**The Honorable Lurita A. Doan**
Administrator
General Services Administration

**Brian D. Miller**
Inspector General
General Services Administration